

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARNELL O MCGARY,

Petitioner,

v.

MARK STRONG,

Respondent.

CASE NO. C14-5829 BHS-KLS

ORDER DENYING PETITIONER'S
MOTION FOR DISCOVERY

Petitioner Darnell McGary seeks an order“allowing discovery as good cause is being shown to reference the illegal nature of his restraint.” Dkt. 9. Mr. McGary fails to show that discovery is necessary or proper under the limited scope of review allowed by 28 U.S.C.§ 2254(d), and therefore, the motion is denied.

DISCUSSION

Rule 6(a) of the Rules Governing Section 2254 Cases provides that a judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of discovery. Rule 6(a), 28 U.S.C. foll.§2254. However, “[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course.” *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Discovery is properly limited in

1 habeas corpus because it “is not the trial itself but a collateral attack upon a standing conviction.”
2 *Austad v. Risley*, 761 F.2d 1348, 1355 n. 4 (9th Cir. 1985). Absent a showing of good cause, a
3 court should deny a motion for leave to conduct discovery. *Rich v. Calderon*, 187 F.3d 1064,
4 1067-68 (9th Cir. 1999). To show good cause, the petitioner must set forth specific facts
5 showing that discovery is appropriate in the particular case. *Deputy v. Taylor*, 19 F.3d 1485,
6 1493 (3rd Cir. 1994) (citing *Mayberry v. Petsock*, 821 F.2d 179, 185 (3rd Cir. 1987)).

7 In addition, the Court’s review is limited to the record before the state courts when the
8 state courts adjudicated the claims. 28 U.S.C. § 2254(d); *Cullen v. Pinholster*, 131 S. Ct. 1388,
9 1398 (2011). “Evidence introduced in federal court has no bearing on § 2254(d)(1) review. If a
10 claim has been adjudicated on the merits by a state court, a federal habeas petitioner must
11 overcome the limitation of § 2254(d)(1) on the record that was before that state court.” *Id.* at 1400.

12 Under this limited scope of review, the Court may not consider new evidence not
13 presented to the state courts.

14 Mr. McGary does not set forth specific facts showing that discovery is appropriate in his
15 case. Therefore, his motion (Dkt. 9) is **DENIED**. The Clerk shall send a copy of this Order to
16 Petitioner and to counsel for Respondent.

17 DATED this 12th day of November, 2014.

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20 Karen L. Strombom
21 United States Magistrate Judge
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